

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HERIBERTO PALACIO,

Plaintiff,

- against -

THE CITY OF NEW YORK, CORRECTION
OFFICERS: DANIEL FABRE, #5587,
CHRISTOPHER RICHARD, #8594,
BENJAMIN DOMENECH, #1188,
CARLOS RIVERA, et al., in their
individual and official capacities,

06 Civ. 3656 (CLB)

Memorandum and Order

Defendants.

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Brieant, J.

The Report and Recommendation of the Hon. George A. Yanthis, United States
Magistrate Judge, filed in this action on January 15, 2008 is hereby adopted as the decision of
this Court.

The claimed injuries while not serious, are not *de minimis* as a matter of law. The issue
of qualified immunity may not be resolved without a plenary trial, in light of the disputed issues
of material fact relating to the reasonableness of the force used.

The Court declines at this time to make the finding contemplated by Rule 54(b) Fed. R.
Civ. P.

SO ORDERED.

Dated: White Plains, New York
March 14, 2008

Charles L. Brieant.
Charles L. Brieant, U.S.D.J.